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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,762	06/22/2001	David L. Thompson	P-9148.00	8719

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MEDTRONIC, INC.
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MINNEAPOLIS, MN 55432-9924

EXAMINER

RINES, ROBERT D

ART UNIT	PAPER NUMBER
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3626

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/887,762	Applicant(s) THOMPSON, DAVID L.	
	Examiner Robert D. Rines	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006 and 15 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,7,9 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 18-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

[1] A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 December 2006 has been entered.

Election/Restrictions

[2] Newly submitted claims 18-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 18-20 are directed to a method for managing chronic home care of patients including accessing treatment and prescription plans for the patient and conducting two-way verbal communication with an expert at a remote location whereas the originally presented claims are directed to an apparatus (i.e., a portable extender for use by a visiting nurse). Further, originally presented claims 1-14 and newly added claims 18-20 appear to relate as a product and process of using the product, however, newly added claims do not require the use of each functional component of the claimed apparatus.

Art Unit: 3626

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Notice to Applicant

[3] This communication is in response to the Amendment After Final Rejection filed 24 October 2006 and the Request for Continued Examination (RCE) filed 15 December 2006. It is noted that this application benefits from the effective filing date of 23 June 2000. Claims 2-4, 6, 8, and 10-14 have been cancelled. Claims 1, 5, 7, and 9 have been amended. Claims 15-20 have been added. Claims 18-20 have been withdrawn from consideration. Claims 1, 5, 7, 9 and 15-20 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[4] Claims 1, 5, 9, and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang et al. (United States Patent #6,553,262) in view of Causey III et al. (United States Patent #4,809,697) and further in view of Jenkins et al. (United States Patent #6,597,392).

As per (currently amended) claim 1, Lang et al. disclose a portable extender adapted for use by a visiting nurse, the extender comprising: means for establishing a wireless data communication with a medical device implanted in a patient being visited by the nurse; (Lang et al.; Abstract and col. 3, lines 48-55, col. 4, lines 8-23, col. 5, lines 20-65, col. 6, lines 38-48); and means for downloading diagnostic data from the medical device (Lang et al.; col. 5, lines 20-65, col. 6, lines 38-48).

While Lang et al. disclose employing "appropriate function key of the mobile phone" to activate or facilitate connection or linking of the implanted device and the telemetric receiver, and

Art Unit: 3626

therefore disclose means for establishing the wireless data communication, and means for downloading data, Lang et al. fail to disclose the use of a touch screen in this capacity. Lang et al. further fail to disclose inclusion of a video camera for identification or other purposes.

However, as evidenced by Causey, III et al., it is well known in the art to employ a touch sensitive screen to control functions including initiating data downloads from implantable medical devices (Causey, III et al.; col. 5, lines 38-57). Accordingly, Causey et al. disclose a touch screen coupled to and providing means for a user to activate the means for establishing the wireless data communication, and the means for downloading data (Causey, III et al.; col. 5, lines 38-57).

While Causey, III et al. disclose a touch screen input device, Causey et al. fail to disclose a video camera or a touch screen coupled to and providing means for a user to activate the video camera.

However, as evidenced by Jenkins et al., it is well-known in the remote healthcare art to combine patient data extraction and collection devices with audio-video teleconferencing feature (Jenkins et al.; Abstract and col. 2, lines 65-67 and col. 3, lines 1-9 and lines 33-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lang et al. with those of Causey III et al., and Jenkins et al. Such combination would have resulted in an external patient device equipped to implement bi-directional telemetric data exchange with an implanted cardiac pacemaker and further equipped

Art Unit: 3626

to transmit the obtained data to a patient monitoring center (i.e., remote location) (Lang et al.; col. 5, lines 51-65). Additionally, it would have been an obvious to one of ordinary skill in the art to have employed a well-known data input device such as a touch screen to control programming and data retrieval functions (Causey, III et al.; col. 5, lines 38-57). Lastly, the resultant apparatus would have been equipped with a video camera such that a home care nurse at a patient residence can connect to a physician through a video conferencing session (Jenkins et al.; col. 3, lines 43-55). The motivation to combine the teachings of Lang et al. with those of Causey III et al. would have been to employ well-known and proven data input devices such as a touch screen in order to allow an operator to make a command selection by touching the screen at the area indicated on the display for the desired command (Causey III et al.; col. 5, lines 38-56). The motivation to additionally combine the teachings of Jenkins et al., would have been to equip a device to capture multi-media data for organization and transmission from a database that is portable with the medical community and further to provide a high-definition capture device to provide high-definition images for analysis (Jenkins et al.; col. 1, lines 43-50).

Claims 2-4 have been cancelled.

As per (currently amended) claim 5, Jenkins et al. disclose the extender further comprises a means for transferring video images collected by the video camera to a remote location (Jenkins et al.; col. 3, lines 43-67).

Claim 6 has been cancelled.

Art Unit: 3626

Claim 8 has been cancelled.

As per (currently amended) claim 9, Lang et al. disclose a portable extender further comprising means to transfer the diagnostic data to a remote location (Lang et al.; col. 5, lines 51-65 and col. 6, lines 49-61).

Claims 10-14 have been cancelled.

As per (newly added) claim 15, Lang et al. disclose an extender further comprising a cell phone including a microphone (Lang et al.; col. 3, lines 48-55 and col. 5, lines 51-65).

As per (newly added) claim 16, extender of claim 1 further comprising a data storage disk (Lang et al.; col. 5, lines 51-65 and col. 6, lines 49-61).

Regarding claims 5, 9, and 15-16, the obviousness and motivation to combine as discussed with regard to claim 1 above are applicable to claims 5, 9, and 15-16 and are herein incorporated by reference.

[5] Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang et al., Causey III et al., and Jenkins et al., as applied to claim 1 above, and further in view of DeLorme et al. (United States Patent #5,948,040).

As per claim 7 and (newly added) claim 17, while Lang et al. teach the use of a cellular positional method for determining the location of the data collection device/patient (Lang et al.; Abstract), Lang et al. fail to employ a GPS system. Both Causey III et al. as well as Jenkins et al. fail to disclose a GPS or navigational software.

However, as is evidenced by DeLorme et al. portable devices that couple navigational information (GPS derived or other) with scheduling, route planning, and mapping features provided by executable software are well-known (DeLorme et al.; Abstract, col. 4, lines 43-61 and col. 7, lines 22-51). Accordingly, DeLorme et al. disclose a portable device further comprising a GPS system and computer implemented software for planning and organizing a daily travel schedule (DeLorme et al.; Abstract, col. 4, lines 43-61 and col. 7, lines 22-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lang et al., Causey III et al., and Jenkins et al., as applied to claim 1 above, with those of DeLorme et al. Such combination would have resulted in a apparatus equipped with well-known GPS technology and navigational/route planning software (DeLorme et al.; Abstract, col. 4, lines 43-61 and col. 7, lines 22-51). The motivation to combine would have been employ well known GPS-based navigational assistance features designed to assist a user of the device with planning travel routes (DeLorme et al.; col. 6, lines 56-67).

Newly added claims 18-20 have been withdrawn from consideration.

Response to Amendment/Remarks

[6] Applicant's amendments and remarks filed 24 October 2006 have been fully considered by the Examiner and are considered moot in view of newly added grounds of rejection.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 18 April 2006 amendment have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of newly added references Lang et al., Causey III et al., and Jenkins et al., and previously applied references DeLorme et al. based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (mailed 31 August 2006), and incorporated herein.

Conclusion

[7] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Rines whose telephone number is 571-272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RDR



3/14/07



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